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OCT 11 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

October 11, 1994

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

RE: Policies and Rules Implementing
the Telephone Disclosure and
Dispute Resolution Act -- CC Docket 93-22

Dear Mr. Caton:

Attached please find an original and four copies of the New York Clearing House Association's ("NYCHA's") comments on the Order on Reconsideration and Further Notice of Proposed Rulemaking in the above captioned matter. Please date stamp and return the additional copy for our files.

If you have any questions regarding this filing, please feel free to call me at the number listed above.

Sincerely,

Debra Lagapa

Debra L. Lagapa
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Counsel for the New York
Clearing House Association

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OFFICE OF SECRETARY

In the Matter of)
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Policies and Rules Implementing)
the Telephone Disclosure and Dispute)
Resolution Act)
)

CC Docket No. 93-22

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COMMENTS OF THE
NEW YORK CLEARING HOUSE ASSOCIATION

Pursuant to the Order on Reconsideration and Further Notice of Proposed Rulemaking in the above-captioned matter, the New York Clearing House Association ("NYCHA") submits these comments in support of the Commission's proposed rules on 800 number pay-per-call services.¹

NYCHA is an association of financial institutions whose members include eleven of the leading banks in New York.² It serves primarily as a clearinghouse through which members settle accounts and present checks and other payment instruments. As large users of telecommunications services,

¹ *Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act*, CC Dkt. No. 93-22, Order on Reconsideration and Further Notice of Proposed Rulemaking (released Aug. 31, 1994) ("FNPRM").

² The members of the New York Clearing House Association are The Bank of New York, The Chase Manhattan Bank, N.A., Citibank, N.A., Chemical Bank, Morgan Guaranty Trust Company of New York, Bankers Trust Company, Marine Midland Bank, United States Trust Company of New York, National Westminster Bank USA, European American Bank and Republic National Bank of New York.

NYCHA members are vulnerable to fraudulent and deceptive telecommunications practices. Indeed, several of NYCHA's member banks have been victimized by the 800 number pay-per-call scams addressed in the proposed regulations.

DISCUSSION

NYCHA applauds the Commission for its prompt efforts to remedy an apparent loophole in its existing pay-per-call rules. As the Further Notice of Proposed Rulemaking recognizes, telephone subscribers "have a right not to be billed for services provided in violation of federal law . . . and should not have the obligation, in the first instance, of determining whether prohibited charges are present on their monthly bills." FNPRM at ¶ 26.

Although the Commission's rules implementing the Telephone Disclosure and Dispute Resolution Act largely prohibited the use of 800 numbers for paid information services, an exception currently exists that allows callers to be billed for information services accessed through an 800 number if "the calling party has a presubscription or comparable arrangement" with the pay-per-call service. 47 C.F.R. § 64.1504(c). Unscrupulous pay-per-call operators have seized upon this exemption to devise a new phone scam, which effectively creates a "presubscription arrangement" by automatically assigning a Personal Identification Number ("PIN") to the originating telephone number when a caller first dials the 800 line information service.³ The subscriber of the originating line

³ The caller's billing account number is the originating telephone number, plus PIN.

is then billed for all information service charges even though it never authorized such charges and, in all likelihood, was completely unaware that a presubscription arrangement had been established.⁴

The Commission's modified pay-per-call rules acknowledge the subscriber's legitimate right to be free of unauthorized telephone charges by placing the burden on the information service provider to establish a valid presubscription arrangement. First, the proposed rules make it clear that the restrictions on the use of 800 numbers for pay-per-call services are intended to protect not only users of the information service, but also subscribers whose telephone lines may be used to place 800 line information service calls. FNPRM at ¶ 28. Second, they explicitly prohibit the use of 800 numbers to connect callers to any information service that is not provided under a presubscription or comparable arrangement. *Id.* Third, and most importantly, they modify the definition of "a presubscription or comparable arrangement" to require that such arrangements be established only with a legally competent individual and be executed in writing. *Id.* at ¶ 29.⁵ In addition, common carriers may not bill for presubscribed information services accessed through an 800 number unless the carrier receives proof of written authorization by the telephone subscriber. *Id.*

⁴ In effect, the originating telephone number, plus PIN, becomes a line-based calling card through which the caller can bill substantial charges for subsequent calls to that pay-per-call service. In many cases, the caller is able to place subsequent calls from an entirely different location and still bill them to the telephone number originally used to access the pay-per-call service.

⁵ Alternatively, IP charges may be placed on a credit or charge card "generally accepted for the purchase of consumer goods, entertainment, travel, and lodging." FNPRM at ¶ 29.

By placing the burden on the information service provider to demonstrate written evidence of a presubscription arrangement with an authorized subscriber, the proposed regulations effectively preclude a significant abuse left open in the Commission's original pay-per-call rules. NYCHA further supports the proposed modification that would require carriers to separate the charges for presubscribed information services from charges for other telecommunications services. Every telephone subscriber must have a convenient means of identifying potentially unauthorized charges and verifying the accuracy of its monthly phone bills. This need is particularly acute for large users, which may have thousands of telephone lines and literally pages upon pages of monthly telephone charges.

While NYCHA is cognizant of the new burdens that will be imposed on legitimate information service providers and common carriers under the proposed pay-per-call rules, it wholeheartedly agrees with the Commission that these burdens are outweighed by the need to protect subscribers from improper charges for services they never requested or received. Given the infeasibility of blocking 800 line information services, the safeguards proposed by the Commission offer the only effective means to protect subscribers from the abusive tactics of a few unethical IPs. The proposed rules balance the interests of the information services industry by continuing to allow the use of 800 numbers for pay-per-call services when authorized through a legitimate presubscription arrangement or when billed to a valid credit or charge card.

In sum, the New York Clearing House Association supports the Commission's modified pay-per-call rules and urges their prompt adoption.

Respectfully submitted,

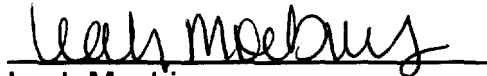
A handwritten signature in black ink that reads "Debra L. Lagapa" followed by a stylized flourish or initials.

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Counsel for the New York
Clearing House Association

CERTIFICATE OF SERVICE

I, Leah Moebius, hereby certify that true and correct copies of the New York Clearing House Association's ("NYCHA's") comments on the Order on Reconsideration and Further Notice of Proposed Rulemaking in CC Docket 93-22, have been served upon the Commission and parties of record via first class mail, this 11th day of October, 1994.


Leah Moebius

October 11, 1994